



December 28, 2001

Mr. Anthony S. Corbett
Winstead
100 Congress Avenue, Suite 800
Austin, Texas 78701

OR2001-6124

Dear Mr. Corbett:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 156598.

The Brushy Creek Municipal Utility District (the "district"), which you represent, received four requests from the same requestor for all e-mails sent or received by certain specified district staff, directors and consultants, as well as legal counsel, for certain specified time periods.¹ You inform us that certain responsive information will be made available to the requestor, but claim that the remaining requested information is excepted from disclosure under sections 552.107 and 552.111 of the Government Code. We have considered the exceptions you claim and reviewed the submitted representative sample of information.²

Section 552.107(1) excepts information that an attorney cannot disclose because of a duty to his client. In Open Records Decision No. 574 (1990), this office concluded that section 552.107 excepts from public disclosure only "privileged information," that is,

¹The district received the requests on two separate days. The first three requests were received by the district on October 8, 2001. Two of the requests sought e-mails "since 17 May 2001," and one request sought e-mails "since 17 August 2001." The last request was received by the district on October 23, 2001 and sought e-mails "since 8 October 2001."

²We note that the district submitted the responsive information in its entirety for our review on computer discs, and also submitted paper copies which the district asserts are a representative sample of the requested information. See Gov't Code § 552.301(e)(1)(D) (governmental body must submit to the attorney general within 15 days of receiving a request a copy of the specific information requested, or submit representative samples of the information if a voluminous amount of information was requested). We agree that the "representative sample" of records submitted to this office is truly representative of the requested records as a whole. See Open Records Decision Nos. 499 (1988), 497 (1988). This open records letter does not reach, and therefore does not authorize the withholding of, any other requested records to the extent that those records contain substantially different types of information than that submitted to this office.

information that reflects either confidential communications from the client to the attorney or the attorney's legal advice or opinions; it does not apply to all client information held by a governmental body's attorney. Open Records Decision No. 574 at 5 (1990). Section 552.107(1) does not except purely factual information from disclosure. *Id.* Section 552.107(1) does not except from disclosure factual recounting of events or the documentation of calls made, meetings attended, and memos sent. *Id.* at 5.

Upon review of the information submitted as Exhibit B, we conclude that most of it comes within the attorney-client privilege and is therefore excepted from disclosure under section 552.107(1). We have marked the information to be withheld. The remaining portion does not come within the attorney-client privilege and thus may not be withheld under section 552.107. Nor is this information protected under section 552.111, which excepts from disclosure "an interagency or intraagency memorandum or letter that would not be available by law to a party in litigation with the agency." As section 552.111 generally protects only advice, opinion, and recommendations reflecting the policymaking processes of the governmental body, any protection under section 552.111 will usually be no greater or less than the protection offered under section 552.107. *See* Open Records Decision No. 574 at 2 (1990).

To summarize, the majority of the information you have submitted as Exhibit B is excepted under section 552.107(1). We have marked this information. The remainder of the submitted information is not excepted under section 552.107 or 552.111 and must be released to the requestor.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days. *Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records;

2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the Texas Building and Procurement Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle
Assistant Attorney General
Open Records Division

MAP/seg

Ref: ID# 156598

Enc. Submitted documents

c: Mr. John C. McLemore
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(w/o enclosures)